

CONGRESSIONAL RECORD SUMMARY

Tuesday, October 16, 2001

SENATE

H.R. 2506. Foreign Operations Appropriations:

Senate continued consideration of the motion to proceed to consideration of H.R. 2506, making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2002.

Pages S 10747-65, D 1022

"...We have had a problem, as I have seen it, in recent months, leaving us with an ever-growing backlog, one of the largest backlogs of judicial vacancies we have ever had. I would like to share a few thoughts about that. [] President Clinton nominated and got confirmed 377 Federal judges, almost exactly the number President Reagan had in his 8 years in office. [] That 41 nominees were unconfirmed is a rather low number, in my view. Really, 67 vacancies were in existence at that time in the Federal judiciary. We have over 800 Federal judges, and 60-some judges has generally been considered a normal vacancy rate. It just about takes that much time for the names to go up to the President, for him to consider them, an FBI background check to be done, to submit the nominee's name, they answer all the questionnaires we demand of them, ABA does a background check--and it just takes some time. So you seldom will be below 50 vacancies in the Federal judiciary. However, we begin to see the numbers increase dramatically. Just a few days ago we had 110 vacancies in the Federal judiciary. Now I think it is 108 after the confirmation of the 2. To me, this is too large a vacancy. Let me tell you why I am concerned about it. I will be frank with you about it. The reason I am concerned is that there is a sense in which this slowdown in confirmations is a part of a plan to block President Bush's nominees in an unusual and special way. Unlike anything we have seen before..." (Sessions, Pages S 10749-51)

"... In fact, his first 11 nominations were sent to the Senate on May 9 of this year, more than 2 months earlier than any of the previous 3 Presidents in their first years. Of these 11, all received either the highest or second highest rating available from the American Bar Association, and all have had their paperwork complete for many months. In eight situations, there were formal judicial emergencies. Yet only three have received a hearing. [] Part of fighting the war on terrorism is to have a judiciary that is adequately staffed. There is a very significant, a very high vacancy rate currently in the Federal judiciary across America. This pace we have been following is just painstakingly slow and is really not necessary at all. As time passes and we do not have serious action on judicial nominees, the situation gets worse. Just today, another judge, Charles Wolle of the Southern District of Iowa, announced he has taken another status. Another day has gone by, and we have lost another judge. The vacancy situation has now risen to 109, which is almost 13 percent of the Federal bench. That means that more than 1 out of every 10 seats is unfilled. Justice delayed, as we all know, is justice denied. And if there is not a judge on the bench, obviously you cannot get justice..." (McConnell, Pages S 10752-3)

"...To further validate what the Senator from Kentucky just said, the fact is that in almost every case in the past several years the nominees are voted on as a bloc by voice at the end of the day, or by a unanimous consent. In other words, the majority leader will usually stand up and say: I ask unanimous consent that we now go to Executive Calendar number such-and-such and consider the following 14 candidates for judge. The clerk reads the names. Is there any objection? Without objection, it is so ordered. It is done. That is all the time it takes. It is true that the chairman of the Judiciary Committee since June has insisted on rollcall votes on the Senate floor. That is fine, too. That takes 20 minutes per judge. We can do that. We can have debate before that. No problem. We are saying that we now have an opportunity do to that; let's do it..." (Kyle, Page S 10755)

H.R. 2506. Foreign Operations Appropriations (Cont'd.):

"... So far as justice and the judicial system are concerned, there are currently 106 vacancies in the Federal courts, 31 at the circuit court and 75 at the district court level, which is higher--it is almost 50 percent higher than the vacancy rate 2 years ago when many Democratic Senators, including the current chairman, Senator Leahy, complained about a vacancy crisis. That is when there was a 50-percent vacancy rate. Forty-one of those vacancies have been formally classified as judicial emergencies by the nonpartisan Judicial Conference of the United States. This is the highest vacancy rate since 1994..." (Allen, Page S 10761)

A unanimous-consent agreement was reached providing for further consideration of the motion to proceed to consideration of the bill on Wednesday, October 17, 2001, with a vote on a motion to close further debate on the motion to proceed to consideration of the bill to occur at 11 a.m.

Pages S 10776-7, D 1022

Committee Meetings:

Committee on Health, Education, Labor, and Pensions: Committee ordered favorably reported the following business item: the nomination of *Eugene Scalia*, of Virginia, to be *Solicitor for the Department of Labor*.

Committee on the Judiciary: Subcommittee on Youth Violence held hearings to examine the defense of America's surface transportation infrastructure, focusing on analysis to evaluate terrorist threats and increased security measures for public transportation.

Page D 1023

Committee Meetings For Wednesday, October 17, 2001:

Committee on Commerce, Science, and Transportation: @ 9:30 a.m. Business meeting to consider S. 1550, to provide for rail safety and security assistance. SR-253.

Committee on Foreign Relations: @ 11:00 a.m. To hold a closed briefing on the recent international campaign against terrorism. S-407, Capitol.

Page D 1026

Committee on Governmental Affairs: @ 9:30 a.m. With the Subcommittee on International Security, Proliferation and Federal Services, to hold hearings to examine federal efforts to coordinate and prepare the United States for bioterrorism. SD-342.

Pages D 1026-7

Committee on the Judiciary: @ 10:30 a.m. Subcommittee on Immigration, to hold hearings to examine effective immigration controls to deter terrorism. SD-226.

Page D 1027

Remarks:

Holding Up Appropriations Bills.

"... We are going to continue to move judicial nominations as quickly as we can. There is a hearing set this

week where we are going to move five. Senator Leahy is going to have hearings next week, even though when the majority was on the other side of the aisle, they never held confirmation hearings 2 weeks in a row. We are going to do that because we are not going to treat them the way they treated us. We are going to move these nominations as quickly as we can. They believe it is a greater priority to move some judges than it is to do other matters now before the Senate; namely, appropriations bills. These tactics are not simply dilatory; they are obstructionist. They demonstrated last week that they were even willing to hold up an aviation security bill. We worked our way through that time wise, but it took a lot of extra time..."

Reid

Pages S 10745-6

Work The Senate Can Accomplish.

"... Frankly, the constant talk that we hear that we didn't do as many when you were in the majority is immaterial, whether that is right or wrong. The fact is, here is where we are, and we have 50-some judges waiting to be approved, with very few in. In the Tenth Circuit, we have 4 vacancies out of 12. There is no movement to do anything about that..."

Thomas

Pages S 10746-7

Judicial Confirmations.

"... The Senate has confirmed only 8 judges so far this year, compared to 60 who have been nominated. During the Clinton administration, the Senate confirmed an average of 47 judges per year. In the first year of the Clinton administration, the Senate confirmed 28 judges, which is about average when compared to the first year for Reagan and Bush I. In the final year of the Clinton administration, we confirmed 39. Given these numbers, it should not be surprising that the number of vacancies is much higher today than at the end of the Clinton administration. As of today, there are 109 vacancies for a vacancy rate of 12.7 percent, while at the end of the Clinton administration last year, there were only 67 vacancies for a 7.9 percent vacancy rate. The Senate confirmed almost the same number of judges for President Clinton as for President Reagan, 377 compared to 384. This is true even though Republicans controlled the Senate for six years of Clinton and six years of Reagan. In fact, while I was Chairman for the first six years of the Reagan administration, I made confirmations arguably my top priority. Yet, the numbers are comparable..."

Thurmond

Pages S 10765-6

HOUSE

Bills Introduced:

H.R. 3129. A bill to *authorize appropriations for fiscal years 2002 and 2003 for the United States Customs Service for antiterrorism, drug interdiction, and other operations*, for the Office of the United States Trade Representative, for the United States International Trade Commission, and for other purposes; to the Committee on Ways and Means.

Crane

Page H 6918

H.R. 3133. A bill to amend title II of the Social Security Act to authorize waivers by the Commissioner of Social Security of the 5-month waiting period for entitlement to benefits based on disability in cases in which the Commissioner determines that such waiting period would cause undue hardship to terminally ill beneficiaries; to the Committee on Ways and Means.

Cantor

Page H 6918

Bills Introduced (Cont'd.):

H.R. 3138. A bill to *establish a club drug taskforce*, and to authorize grants to expand prevention efforts regarding the abuse of club drugs; to the Committee on Energy and Commerce.

Graves

Pages H 6918-19

H.R. 3142. A bill to establish a separate process for State commission evaluation of rural and small telephone company exemptions, suspensions, and modifications, with respect to advanced telecommunications capabilities; to the Committee on Energy and Commerce.

Radanovich

Page H 6919

H.R. 3145. A bill to promote greater cooperation between the United States and its European allies toward religious tolerance *and to require the imposition of punitive measures with respect to entities that discriminate against individuals or groups on the basis of religion or belief*; to the Committee on International Relations, and in addition to the Committees on the Judiciary, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

Ros-Lehtinen

Page H 6919

H.R. 3146. A bill to restrict the transmission of unsolicited electronic mail messages; to the Committee on Energy and Commerce.

Smith

Page H 6919

H. Con. Res. 250. *Concurrent resolution honoring the United States Capitol Police for their commitment to security at the Capitol; to the Committee on House Administration.*

Lee

Page H 6919

Reports Filed:

Reports were filed today as follows:

H.R. 1408, to safeguard the public from fraud in the financial services industry, to streamline and facilitate the antifraud information-sharing efforts of Federal and State regulators, amended (House Report 107-192, Pt. 2);

H.R. 1552, to extend the moratorium enacted by the Internet Tax Freedom Act through 2006, amended (House Report 107-240);

H.R. 2481, to improve maritime safety and the quality of life for Coast Guard personnel, amended (House Report 107-243);

Pages H 6918, D 1024

Committee Meeting:

Committee on Government Reform: Subcommittee on Civil Service and Agency Organization held a hearing on "*Health Care Inflation and Its Impact on the FEHBP.*"

Page D 1025

Suspensions:

The House agreed to suspend the rules and pass the following measures:

Internet Tax Nondiscrimination Act: H.R. 1552, amended, to extend the moratorium enacted by the Internet Tax Freedom Act through 2006. *Agreed to amend the title;*

Pages H 6803-8, D 1025

Consequences for Juvenile Offenders Act: H.R. 863, amended, to provide grants to ensure increased

accountability for juvenile offenders;

Pages H 6808-13, D 1025

Redaction of Financial Disclosure Statements: H.R. 2336, to make permanent the authority to redact financial disclosure statements of judicial employees and judicial officers.

Pages H 6813-14, D 1025

*"... The **Judicial Conference** Committee on Financial Disclosure recently submitted a report on section 7. The committee monitors the release of financial disclosure reports to ensure compliance with the statute, reviews redaction requests, and approves or disapproves any request for a redaction of statutorily mandated information where the release of the information could endanger a filer. In the year 2000, the committee noted, first, 13 financial disclosure reports were wholly redacted because the judge was under a specific and active security threat and, second, only 140 judges' reports were partially redacted due to specific or general threats. The purpose of the annual disclosure reports required by the Ethics in Government Act is to increase public confidence in government officials and better enable the public to judge the performance of those officials. However, Federal judges should be allowed to redact certain information from financial disclosures when they or a family member is threatened. Importantly, this practice has never interfered with the release of critical information to the public..." (Sensenbrenner, Pages H 6813-14)*

Committee Meetings For Wednesday, October 17, 2001:

Committee on Energy and Commerce, @ 10:00 a.m. Subcommittee on Health, to mark up **H.R. 3046**, Medicare Regulatory, Appeals, Contracting, and Education Reform Act of 2001. 2123 Rayburn.

Committee on Government Reform, @ 1:00 p.m. Subcommittee on Criminal Justice, Drug Policy, and Human Resources, hearing on *"Keeping a Strong Federal Law Enforcement Work Force."* 2247 Rayburn.

Committee on Government Reform, @ 2:00 p.m. Subcommittee on Technology and Procurement Policy, hearing on *"Turning the Tortoise Into the Hare: How Federal Government Can Transition From Old Economy Speed to Become a Model for Electronic Government."* 2154 Rayburn.

Committee on the Judiciary, @ 10:00 a.m. Subcommittee on Immigration and Claims, oversight hearing on Immigration and Naturalization Service Performance Issues. 2237 Rayburn.

Committee on Rules, @ 3:00 p.m. To consider **H.R. 3090**, Economic Security and Recovery Act of 2001. H-313 Capitol.

Committee on Science, @ 10:00 a.m. Hearing on Cyber Terrorism, a View from the Gilmore Commission. 2318 Rayburn.

Committee on Transportation and Infrastructure, @ 10:00 a.m. Subcommittee on Coast Guard and Maritime Transportation, hearing on Drug Interdiction. 2167 Rayburn.

Page D 1027

Committee Meetings For Wednesday, October 17, 2001 (Cont'd.):

Committee on Ways and Means, @ 4:00 p.m. To mark up the following measure: **H.R. 3129, Customs Border Security Act of 2001.** 1100 Longworth.

Joint Economic Committee: @ 10:00 a.m. To hold hearings to examine monetary policy in the context of the current economic situation. 311 Cannon Building.

Page D 1027

Remarks:

Patriot Act Of 2001.

Meehan

Page E 1893

Mink

Pages E 1896-7

DeGette

Page E 1897

Patriot Act Of 2001.

"...Surveillance under FISA is granted by a secret court whose decisions and proceedings are not part of the public record, and those being wiretapped never know that such an order has been granted, and have no way to appeal the court's decision. Presently, a wiretap under FISA can be obtained if the target is suspected of being an agent of a foreign power, without probable cause. The bill passed by the House would allow a person to be secretly wiretapped under the easier FISA rules as long as foreign intelligence is at least one component of the investigation. This means that Americans not suspected of being spies can now be placed under surveillance as if they are foreign agents, without the usual protections of the Fourth Amendment. So, without probable cause, the government would be able to secretly authorize wiretaps to trace the calls made to the person being monitored, as well as monitor their Internet activity. Although the bill says that the Internet surveillance is limited to the address visited but not the content, all a government agency has to do to capture content is to use the Internet address information gathered and visit the site in question..."

Kleczka

Page E 1904

Next SENATE MEETING: Wednesday, 10:00 a.m., October 17, 2001.

Next HOUSE MEETING: Wednesday, 10:00 a.m., October 17, 2001.

OLA: S. Schwarz (Smith)